

Securities and Exchange Commission

§ 270.27e-1

company (as defined in section 2(a)(17) of the Act) undertakes in writing to guarantee the performance of all obligations of such depositor or principal underwriter to refund charges under sections 27(d) and 27(f) of the Act and paragraph (b) of this section: *Provided, however, That:*

(1) Such insurance company at all times shall have (i) combined capital paid-up, gross paid in and contributed surplus and unassigned surplus, if a stock company, or (ii) unassigned surplus, if a mutual company, at least equal to the larger of (a) \$1 million or (b) 200 percent of the amount of the total refund obligation of the depositor or underwriter pursuant to sections 27(d) and 27(f) (of the Act) less any liability reserve established by such insurance company to meet such obligations; and

(2) Such depositor or underwriter shall file or cause to be filed with the Commission as an exhibit to the registration statement or any amendment thereto pursuant to the Securities Act of 1933 of the registered investment company issuing periodic payment plan certificates (i) a copy of such written undertaking, and any amendment thereto, (ii) an annual statement certified by a responsible officer of the insurance company indicating that at least on a monthly basis throughout its fiscal year the insurance company has met the requirements of the proviso in paragraph (a)(1) of this section, and (iii) a Statement of Financial Condition (Balance Sheet) of the insurance company certified by an independent public accountant. Such balance sheet shall be filed at least annually, within 90 days after the close of the insurance company's fiscal year.

(b) The refunds required to be made to certificate holders pursuant to sections 27(d) and 27(f) (of the Act) shall be paid in cash not more than 7 days from the date the certificate is received in proper form by the custodian bank or such other paying agent as may be designated under the periodic payment plan.

[36 FR 13137, July 15, 1971]

§ 270.27e-1 Requirements for notice to be mailed to certain purchasers of periodic payment plan certificates sold subject to section 27(d) of the Act.

(a) The notice required by section 27(e) of the Act shall be sent by first class mail and shall be accompanied by a written instruction sheet and a return form to be used in connection with the exercise of the surrender right described in the notice. No other written or graphic material may be included with such notice.

(b) In the event that regular payments throughout the first 18 months of the plan are required less frequently than monthly, such a notice shall be mailed to any certificate holder who has missed any payment or payments equal to or greater in amount than the amount of payments which, if missed, would have required the mailing of a notice if equal monthly payments had been required during such 15- or 18-month periods.

(c) Any payment not made within 31 days after it is due shall be deemed a missed payment whether or not an equivalent payment is made subsequently by the certificate holder.

(d) In the event any such notice is not mailed prior to 15 days before the expiration of the 18th month, the certificate holder shall have 15 days from the date such notice is mailed within which to exercise the right of surrender described therein. Nothing herein contained shall require a second notice to be mailed to any certificate holder who has been mailed a notice within 30 days following 15 months after the issuance of his certificate.

(e) Notwithstanding the requirements of section 27(e) of the Act, no notice need be mailed to a certificate holder if, at the time such notice would be required to be mailed, he would not be entitled to receive any refund of sales loading upon surrender of his certificate.

(f) Form N-27E-1 is hereby prescribed to inform certificate holders of their right to surrender their certificates pursuant to section 27(d) of the Act. The text of Form N-27E-1 is as follows:

§ 270.27e-1

17 CFR Ch. II (4-1-10 Edition)

**FORM N-27E-1—NOTICE TO PERIODIC PAYMENT
PLAN CERTIFICATE HOLDERS OF 8 MONTHS
SURRENDER RIGHTS WITH RESPECT TO PERI-
ODIC PAYMENT PLAN CERTIFICATES²**

IMPORTANT

(Date of mailing)

Re: (1) _____.

DEAR (2) _____: This notice is required to be sent to all purchasers of plan certificates pursuant to laws administered by the U.S. Securities and Exchange Commission. You should read it carefully and retain it with your financial records.

You have missed (3) _____ after your (4) _____ plan certificate was issued. Until (5) _____ you will be entitled to surrender your plan certificate and receive, in addition to the value of your account on the date your certificate is received, a refund of that portion of the sales charges you have paid in excess of 15 percent of the gross payments under your plan.

For example, if your certificate had been received for surrender (6) _____ you would have received a total of \$ _____ (7) _____ for it (the value of your account \$ _____ (8) _____ plus a refund of \$ _____ (9) _____ of the sales charges you have paid). After your right expires you will be entitled to receive only the value of your account. Of course, the value of your account will vary from day to day and by the date your right expires it may be more or less than it is today.

In determining whether to exercise your right to terminate your plan, you should consider that, while the average sales charge deducted from your payments has amounted to (10) _____ percent of the total payments made, the sales charge for the remainder of the payments under the plan, if you continue the plan, will be (11) _____ and the average sales charge if you complete the plan will be (12) _____ percent. Exercising your right to terminate your plan, however, will result in a net sales charge of 15 percent of your total payments. Accordingly, if you believe you may discontinue making further payments on your plan, it would probably be to your advantage to exercise this right now.

If you wish to exercise your right to terminate your plan, you may return your certificate to (13) _____ by (14) _____ in accordance with the enclosed instructions.

Very truly yours,

_____, (15) _____.

FORM N-27E-1 INSTRUCTIONS

General instructions. A. The notice shall be legible and shall be printed or typed on letter-sized paper. It shall be in modern type at

least as large as 10-point modern type. All type shall be leaded at least 2 points. Parenthetical references should be completed in accordance with the itemized instructions below and need not be underlined or bold-faced.

B. The notice shall bear the letterhead of the sender and the mailing date. An inconspicuous reference to the form number may appear on the notice.

Itemized instructions. Insert the following in the corresponding numbered spaces on Form N-27E-1:

(1) The name of the plan and the account number of the certificate holder. An additional internal recordkeeping reference may also be included at the option of the sender.

(2) The name of certificate holder or an identification such as "Investor" or "Planholder."

(3) Whichever of the following statements is appropriate: "three or more payments during the first 15 months" or "a payment after the 15th month."

(4) The name of the plan.

(5) The date of the first business day which is 18 months from the date of the issuance of the certificate or in the event such notice is not mailed prior to 15 days before the expiration of the 18th month, the date of the first business day which is 15 days from the date such notice is mailed.

(6) A date which is not more than 2 business days prior to the date of the notice.

(7) The sum of Items 8 and 9.

(8) The value of the account payable to the certificate holder if the certificate had been received on the date set forth in Item 6. In the event such certificate holder has made a partial withdrawal in accordance with the terms of his certificate, the notice may state after the first sentence in the third paragraph that "The value of your account reflects the partial withdrawal which you made previously."

(9) The amount as of the date set forth in Item 6 which is equal to that part of the excess paid for sales loading which is over 15 percent of the gross payments made by the certificate holder.

(10) Average percentage deducted for sales charges to the date set forth in Item 6.

(11) The percentage to be deducted for sales charges after the date set forth in Item 6.

If the holder has made less than 12 monthly payments, the following shall be substituted for the first sentence of the third paragraph of the notice:

"In determining whether to exercise your right to terminate your plan, you should consider that, while the sales charge deducted from your payments has amounted to

(10) percent of the total payments made, the sales charge for the next (11a) payments will be (11b) percent and the sales charge for the remainder of the payments will be (11c) percent. If you

²See the General Instructions to Form N-27E-1 in paragraph (f) of § 270.27e-1 of this chapter, 36 FR 13138.

Securities and Exchange Commission

§ 270.27f-1

complete the plan, the average sales charge will be _____ (12) percent.”

(11a) The number of payments yet to be made which are subject to the initial sales to completion.

(11b) The percentage to be deducted from sales charges from such payments.

(11c) The percentage to be deducted for sales charges from all subsequent payments.

(12) Average percentage to be deducted for sales charges from inception of the plan to completion.

(13) Name and address of custodian bank or other person authorized to accept surrendered certificates.

(14) Same date as in Item 5.

(15) The name of a responsible officer of the sender, with his title.

[36 FR 13137, July 15, 1971, as amended at 36 FR 14727, Aug. 11, 1971; 37 FR 9990, May 18, 1972]

§ 270.27f-1 Notice of right of withdrawal required to be mailed to periodic payment plan certificate holders and exemption from section 27(f) for certain periodic payment plan certificates.

(a) The notice and statement of charges (notice) required by section 27(f) of the Act shall be sent by first-class mail and shall be accompanied by a written instruction sheet and a return form to be used in connection with the exercise of the right of withdrawal described in the notice. Except for a confirmation slip, the plan certificate, and any notice required by applicable State law, no other written or graphic material may be included with such notice.

(b) The notice may be mailed by the issuer, the principal underwriter for, or the depositor of, the issuer or a record-keeping agent for the issuer if the custodian bank has delegated the mailing of the notice to any of them or the issuer has been permitted to operate without a custodian bank by Commission order.

(c) Solely for purposes of section 27(f) of the Act, the postmark date on the envelope containing the certificate shall determine whether a certificate has been surrendered within the 45-day period.

(d) Form N-27F-1 is hereby prescribed to inform certificate holders, other than holders of plans upon which the amount of sales load deducted from any payment does not exceed 9 percent of any payment and variable annuity

contracts, of their withdrawal right pursuant to section 27(f) of the Act. The text of Form N-27F-1 is as follows:

FORM N-27F-1 NOTICE TO PERIODIC PAYMENT PLAN CERTIFICATE HOLDERS OF 45-DAY WITHDRAWAL RIGHT WITH RESPECT TO PERIODIC PAYMENT PLAN CERTIFICATES

IMPORTANT

(Date of mailing)

Re: _____ (1) _____

Dear _____ (2) _____: This notice is required to be sent to all purchasers of plan certificates pursuant to laws administered by the U.S. Securities and Exchange Commission. You should read it carefully and retain it with your financial records.

Of the \$ _____ (3) _____ you have paid on your _____ (4) _____ plan, representing _____ (5) _____ regular monthly payments, \$ _____ (6) _____ or _____ (7) _____ percent has been deducted for various charges.

[The following sentence is to be included when any periodic payment remains outstanding in which the sales load charges exceed 9 percent of such payment.]

A total of \$ _____ (8) _____ or _____ (9) _____ percent of your first _____ (10) _____ monthly payments will be deducted from those payments for similar charges.

Charges of \$ _____ (11) _____ or _____ (12) _____ percent will be deducted from each subsequent payment. You have until _____ (13) _____ to surrender your certificate for any reason and receive a refund of all of the charges which have been deducted from your payments, and, in addition, the value of your account on the date your certificate is received.

In determining whether or not to exercise your right you should consider, among other things, the projected cost of your investment and your ability to make the scheduled payments over the life of your plan as they become due. Your plan provides for _____ (14) _____ payments of \$ _____ (15) _____ per _____ (16) _____, or total payments of \$ _____ (17) _____. If you made all of the scheduled payments over the full term of your plan, the total deductions would be \$ _____ (18) _____ or an effective charge of _____ (19) _____ percent of your total payments. However, if you do not complete your program, the deduction of various charges from your initial payments will result in your paying effective charges in excess of that rate. For a more complete description of the charges deducted under your plan, carefully review your prospectus.

If you wish to exercise your right of withdrawal, return your plan certificate to _____ (20) _____ by _____ (21) _____ in accordance with the enclosed instructions.

Very truly yours,

_____ (22) _____.